

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
LAKE COUNTY, ILLINOIS

VILLAGE OF ANTIOCH, ILLINOIS, an Illinois Municipal Corporation,)	
)	
Plaintiff,)	
)	
v.)	No.
)	
FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a Maryland Corporation,)	
)	
Defendant.)	

COMPLAINT FOR DECLARATORY JUDGMENT

NOW COMES the plaintiff, the VILLAGE OF ANTIOCH, ILLINOIS ("Antioch"), by its attorneys, HINSHAW & CULBERTSON LLP, and for its Complaint For Declaratory Judgment against the FIDELITY AND DEPOSIT COMPANY OF MARYLAND ("F&D"), alleges as follows:

1. Antioch is a municipal corporation organized and existing under the laws of the State of Illinois. Antioch is located in Lake County, Illinois.
2. F&D is a corporation organized and existing under the laws of the State of Maryland, with its principal place of business in Schaumburg, Illinois. F&D is authorized to write insurance and issue surety bonds in the State of Illinois.
3. Neumann Homes, Inc. ("Neumann") is an Illinois corporation with its principal place of business in Warrenville, Illinois. Neumann has filed for reorganization under Chapter XI of the Bankruptcy Code, which proceeding is pending in the Bankruptcy Court for the Northern District of Illinois as Case No. 07-20412. Neumann is not a party to these proceedings.

4. This dispute arises out of a surety bond issued by F&D for a subdivision located in Antioch. This Court has jurisdiction over the parties to this dispute. Furthermore, venue is proper because the dispute arises in Lake County.

5. On or about June 5, 2003, Antioch and Neumann entered into an agreement entitled, "Public Infrastructure Agreement For Special Service Area Number 1: Deercrest A.K.A. NeuHaven and 55 Acres" (hereinafter referred to as the "Infrastructure Agreement"). A copy of the Infrastructure Agreement is attached hereto as Exhibit "A".

6. Pursuant to the Infrastructure Agreement, Neumann was obligated to construct certain public improvements (the "Public Improvements") with respect to a new subdivision in Antioch commonly known as the Deercrest Subdivision or the NeuHaven Subdivision (hereinafter referred to as "NeuHaven").

7. As part of the Public Improvements, Neumann agreed to construct certain on-site improvements for Phase 1 of the NeuHaven Subdivision as set forth in plans and specifications prepared by Pearson, Brown & Associates (the "Phase 1 Improvements").

8. As security for the completion of the Phase 1 Improvements, F&D issued a Subdivision/Site Improvement Bond, Bond No. 8661009, in the amount of \$5,260,889.70 (the "\$5,260,889.70 Bond") whereby F&D and Neumann jointly and severally bound themselves to Antioch, as obligee, for the performance and completion of the Phase 1 Improvements. A copy of the \$5,260,889.70 Bond is attached hereto as Exhibit "B".

9. Neumann failed to complete the Phase 1 Improvements. On July 28, 2008, Antioch declared Neumann to be in default of its obligations to complete these Public Improvements (Exhibit "C").

10. On July 28, 2008, Antioch served a demand upon F&D to complete the Phase 1 Improvements pursuant to its obligations under the \$5,260,889.70 Bond (Exhibit "D").

11. On September 25, 2008, F&D issued its response to Antioch's demand, whereby F&D denied all liability with respect to the \$5,260,889.70 Bond. (Exhibit "E"). In essence, F&D asserts that Antioch agreed to cancel or release its rights under the \$5,260,889.70 Bond when F&D executed and delivered Bond No. 8779406 dated March 3, 2005 in the amount of \$1,692,722.00 which also covered certain site improvements in the NeuHaven Subdivision (hereinafter referred to as the "\$1,692,722.00 Bond", attached hereto as Exhibit "F").

12. Contrary to F&D's position, there are no facts which establish that Antioch ever released or cancelled its rights under the \$5,260,889.70 Bond. F&D is an experienced and sophisticated surety. F&D never served a notice to Antioch, as obligee, that F&D intended to cancel the \$5,260,889.70 Bond upon issuance of the \$1,692,722.00 Bond. Antioch never signed an agreement or any other document that released or cancelled its rights under the \$5,260,889.70 Bond. Antioch never agreed, either in writing or otherwise, that the \$1,692,722.00 Bond would release or cancel the \$5,260,889.70 Bond. If F&D intended to cancel the \$5,260,889.70 Bond upon issuance of the \$1,692,722.00 Bond, F&D knew how to properly document the transaction, especially considering the size of the respective Bonds. Because Antioch is not a party to any document establishing that the \$5,260,889.70 Bond would be cancelled upon issuance of the \$1,692,722.00 Bond, Antioch's rights under the \$5,260,889.70 Bond remain in full force and effect.


13. A justiciable controversy exists with respect to the rights of Antioch under the \$5,260,889.70 Bond for resolution by declaratory judgment. Antioch asserts that its rights under

the \$5,260,889.70 Bond remain in full force and effect while F&D asserts that Antioch has released all of its rights under the \$5,260,889.70 Bond.

WHEREFORE, the Village of Antioch prays that the Court enter a Declaratory Judgment finding and granting the following relief:

- A. That the rights of Antioch with respect to the \$5,260,889.70 Bond remain in full force and effect;
- B. That Neumann is in default of its obligations owed to Antioch to complete the Phase 1 Improvements, which obligations are within the scope of the \$5,260,889.70 Bond;
- C. That F&D is in default of its obligations under the \$5,260,889.70 Bond by refusing to complete the Phase 1 Improvements;
- D. That F&D is liable for all costs and expenses incurred by Antioch as the result of the failure by Neumann to complete the Phase 1 Improvements and the failure of F&D to fulfill its obligations under the \$5,260,889.70 Bond, including, but not limited to, engineering fees, attorneys' fees and administrative expenses, plus interest and costs;
- E. That the Court grant all other relief which it finds to be equitable and just.

VILLAGE OF ANTIOCH, ILLINOIS

By 
One of Its Attorneys

Lawrence R. Moelmann
HINSHAW & CULBERTSON LLP
222 North LaSalle Street
Suite 300
Chicago, IL 60601
(312) 704-3000

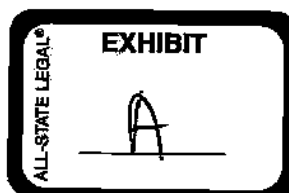
PUBLIC INFRASTRUCTURE AGREEMENT FOR
SPECIAL SERVICE AREA NUMBER 1:
DEERCREST A.K.A. NEU HAVEN AND 55 ACRES

This Public Infrastructure Agreement (this "Agreement") entered into this 5 day of June, 2003 is between the Village of Antioch, Illinois (the "Village") and Neumann Homes, Inc., an Illinois corporation, (the "Developer"). The Village and the Developer are sometimes hereinafter referred to individually as a "Party" and collectively as the "Parties."

RECITALS

A. The Developer and Neu P.C. 55, L.L.C. are each owners of fee simple title to certain portions of that real estate located in Lake County, Illinois and the Village or the fee simple title holder which is legally described in Exhibit A hereto and designated thereon as the "Property" (hereinafter "Property" or "Area").

B. The Property is made up of two different parcels of land, the Deercrest Property ("Deercrest Property") and the 55 Acres ("55 Acres"). The Developer intends to develop, the Deercrest Property with 379 single family detached dwellings and 116 townhouse units (collectively the "Dwelling Units") in a subdivision to be known as the Neu Haven Subdivision ("Neu Haven Subdivision") and to develop the 55 Acres with approximately 30 acres of commercial uses (the "Commercial Property") and with approximately 25 acres which will be reserved for an elementary school ("School Property") (collectively the "Development"). The Property shall be constructed as generally described in the Settlement Agreement ("Settlement Agreement") entitled: Settlement Agreement by and among Bill Anest; Peter Anest; JCC Realty, L.L.C.; BCP Realty, L.L.C; Neumann Homes, Inc.; Estate of Homer D. White; County of Lake; Village of Antioch; and Lake County Forest Preserve District and dated November 21, 2002, including all exhibits thereto, in particular, Antioch Ordinance No. 02-08-27 "An Ordinance Approving Revised Final Plan for Deercrest Planned Unit Development, Special Use, and Final Plat, Deercrest Unit One PZB00-01-R" (the "Deercrest Final Plans," "Deercrest Final Plat" and "Deercrest Final Engineering"); Antioch Ordinance 01-09-35 "An Ordinance Authorizing and Directing the Execution of an Annexation Agreement Between Neumann Homes, Inc., Amcore Trust Company As Trustee, and the Village of Antioch" ("55 Acres Annexation Agreement"); Antioch Ordinance No. 02-09-36 "An Ordinance Annexing Property located at the South East Corner of Illinois Route 173 and Savage Road to the Village of Antioch to the Village of Antioch Lake County, Illinois" Antioch Ordinance No. 02-09-37 "An Ordinance Zoning Approximately the North 30 Acres of a 55 Acre Parcel at the South East Corner of Illinois Route 173 and Savage Road in the B-3 Zoning District and Approximately the South 25 Acres of Said 55 Acre Parcel in the E-1 Zoning District and Granted a Special Use Permit for An Elementary School on Said South 25 Acres" ("55 Acres Zoning Ordinance") (collectively, "Entitlement Documents" or "Entitlements"). The Development will be constructed in phases over a multi-year period.



C. The Developer is also developing the Clublands property ("Clublands") in the Village of Antioch, near the Property.

D. The Village has authority to enter into this agreement under the Special Service Tax Law, 35 ILCS 200/27 *et seq.* and the Illinois Constitution Article VII Section 7.

E. In connection with the approval of the Entitlement Documents, the Village required the Developer to commit to construct certain on site and off site improvements in connection with the Development and to dedicate rights-of-way or easements which, upon completion thereof would be dedicated, conveyed or otherwise become the property of or subject to the maintenance and control of, the Village.

F. The Public Improvements are unique and special services within the meaning of 35 ILCS 200/ 27-5 that will benefit the Area specially and are in addition to the municipal services provided to the Village as a whole. All of the Public Improvements are to be located in either publicly dedicated rights-of-way, on public lands or in publicly dedicated easements and shall generally consist of and include engineering soil testing and appurtenant work, mass grading and demolition, storm water management facilities, storm drainage systems and storm sewers, site clearing and tree removal, public water facilities, sanitary sewer facilities, erosion control measures, roads, streets, curbs, gutters, street lighting, traffic controls, sidewalks and related street improvements, and equipment and materials necessary for the maintenance thereof, landscaping, wetland mitigation, park, park improvements, bicycle paths, utility relocation and tree installation, costs for land and easement acquisitions relating to any of the foregoing improvements, required tap on and related fees for water or sanitary sewer services and other eligible costs soil reports, erosion control improvements, to pay capitalized interest; to prepay the taxes due to the County SSA; to establish a reserve fund; to pay issuance costs; to pay the Special Service Area Number One administration costs; and to reimburse the Village for its expenses including but not limited to legal fees relating to the Bonds; (collectively the "Public Improvements"). The Public Improvements and the estimated related costs are attached hereto as Exhibit B. The Public Improvements are described in more detail in the Entitlement Documents and the exhibits attached thereto and all incorporated by reference herein.

G. The Village represents that based on existing regulatory standards, it has adequate potable water supply to service the Property and that the Property may be developed pursuant to the terms of the approved Entitlements. If adequate public water supply services are not made available to the Property by the Village, to the extent it is consistent with the Rate and Method (as defined in the Limited Offering Memorandum) the Developer shall have the right, but not the obligation, to construct within the Property, with funding provided by Special Service Area Number One, such facilities and plants and to take such other actions, including, without limitation, the drilling of new wells and storage towers on or off of the Property as may be necessary or appropriate to meet the water supply needs of all or any part of the Property.

H. The President and Board of Trustees of the Village (the "Corporate Authorities") determined in Antioch Ordinance 02-08-20 that the Area would benefit specially from construction of the Public Improvements and that it would be in the best interest of the Village to adopt an ordinance (the "Establishing Ordinance") designating the Area as a "Special Service Area Number One" pursuant to Article VII, Section 7 of the Illinois Constitution and the Illinois Special Service Area Tax Law, 35 ILCS 200/27-5 *et seq.* and authorizing the levy of special service area taxes upon the taxable real property within the Special Service Area Number One.

I. No later than December 31, 2003, or such later date as agreed to between the Parties, the Corporate Authorities shall adopt separate ordinances to be drafted by the Village's Bond Counsel (the "Bond Ordinance") authorizing the issuance of Village of Antioch, Lake County, Illinois, Special Service Area Number One Special Tax Bonds, Series 2003A (Deercrest Project) (the "Bonds") to pay a portion of the costs for the Public Improvements, including the financing and other costs associated with the funding of the Public Improvements. The Parties agree to provide for an automatic extension if the underwriter or underwriter's counsel states in writing that any pending lawsuit either is delaying, increasing the cost or interfering with the marketing or sales of the Bonds. Upon receipt of such underwriter advice, the Village will promptly amend this Agreement to extend the time for one year and grant the Developer the right to further one year extensions subject to subsequent receipt of a letter from the underwriter or underwriter's counsel regarding the marketing or sale of the Bonds.

J. The Parties agree that the Developer shall construct the Public Improvements on behalf of the Village and in accordance with the terms and provisions of the Entitlement Documents. The proceeds from the sale of the Bonds shall be under the control of the Village and shall be used to pay for the Public Improvements.

K. The proceeds from the sale of the Bonds (the "Bond Proceeds") to be used by the Village to pay for the Public Improvements shall be held by an institutional trustee, as trustee for the Bond Holders ("Trustee"), in an account entitled the "Improvement Fund" in accordance with a trust indenture relating to the Bonds (the "Trust Indenture").

L. The Corporate Authorities determined that the Development is in the vital and best interest of the Village and the health, safety, morals and welfare of its residents, that property within Special Service Area Number One will benefit specially from the municipal services to be provided to the area and the financing of the Public Improvements by the Village is in accordance with the public purposes and provisions of applicable state and local laws.

M. This Agreement has been submitted to the Corporate Authorities for consideration and review, and the Corporate Authorities have taken all actions required to be taken prior to the execution of this Agreement in order to make the same binding upon the Village according to the terms hereof. The Developer has taken all actions necessary and adopted the proper resolutions to make this Agreement binding upon the Developer according to the terms hereof.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Village and the Developer hereby agree as follows:

ARTICLE ONE
Recitals Part of Agreement

The representations, covenants and recitations set forth in the foregoing recitals are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though they were fully set forth in this Article One.

ARTICLE TWO
Mutual Assistance

The Developer and Village agree to take such actions, including the execution and delivery of such documents, instruments, petitions, certifications (and in the Village's case, the adoption of such ordinances and resolutions), as may be necessary or appropriate from time to time to carry out the terms, provisions and intent of this Agreement and to aid and assist each other in carrying out said terms, provisions and intent.

ARTICLE THREE
Construction of the Public Improvements

3.1 Construction of Public Improvements by the Developer. As required by the Illinois Special Service Area Tax Law, 35 ILCS 200/27-5 *et seq.* the Public Improvements provide a special service specific and unique to the Area, and are essential to the Development; the Developer shall construct the Public Improvements for the benefit of and on behalf of the Village as provided in this Article Three. Construction of the Public Improvements shall commence within six months after the sale of the Bonds. With respect to the Public Improvements to be constructed with the Bond Proceeds, such proceeds shall be fully expended on the Public Improvements within thirty-six (36) months after the sale of the Bonds, provided that all necessary approvals and permits have been granted by the Village. With respect to all Public Improvements, they shall be dedicated or conveyed to the Village after the sale of the Bonds, provided that all necessary approvals and permits have been granted by the Village. The Public Improvements shall be paid for as provided in Article Six of this Agreement.

3.2 Duty of the Developer to Construct.

(a) The Developer, on behalf of the Village, shall cause the Public Improvements to be constructed as a special and unique benefit to the Area. In accordance with the Entitlement Documents, all Public Improvements shall be located in either publicly dedicated rights-of-way, on public lands or in publicly dedicated easements. The Village acknowledges its duty to obtain the necessary easements to connect the Public Improvements in the Area to the Village water

system. The Village acknowledges that it does not intend to design, bid or construct the Public Improvements. The Village agrees that the Developer shall construct the Public Improvements using subcontractors and materialmen selected from time to time by the Developer in the Developer's sole discretion without advertising for bids as permitted by the provisions of Section 65 ILCS 5/8-9-1 of the Illinois Municipal Code. All Public Improvements to be constructed hereunder shall be constructed in substantial accordance with the all applicable laws, ordinances and rules as modified by the Entitlement Documents and shall be constructed in a good workmanlike and commercially reasonable manner. At all times, the Developer shall employ and/or contract with adequate staff, consultants and contractors possessing the requisite experience necessary to administer and coordinate the construction of the Public Improvements.

(b) The Village agrees to accept the Public Improvements provided that the Developer follows the provisions contained in Section 3.9 of this Agreement.

(c) The Parties agree that the Developer shall receive payment for the construction of the Public Improvements in an amount equal to the amount or amounts shown on the budget or budgets attached hereto as Exhibit B, which amounts include a factor for the Developer's construction administration and supervisory expenses (the "Budgeted Amount"). In the event that the actual cost of constructing a particular Public Improvement exceeds the cost budgeted for that Public Improvement ("Excess Cost"), the Developer shall be permitted to utilize funds allocated to other Public Improvements to pay the Excess Cost; provided, however, that any Public Improvements to be paid for with Bond Proceeds must be in conformity with the Rate and Method. The Developer and the Village shall cooperate with each other and shall each use their best efforts to cause the cost of constructing the Public Improvements to be no more than the Budgeted Amount. However, it is understood that if despite the Parties' best efforts, the cost of constructing the Public Improvements exceeds the Budgeted Amount, then the Developer shall be required to complete construction of the Public Improvements, and to the extent that the amounts available from the Improvement Fund are not sufficient to pay for all costs of constructing the Public Improvements, the difference shall be paid by the Developer. In making such payments, however, the Developer does not waive any cause of action it may have against the Village for such cost overruns.

(d) Subject to Article 8 of this Agreement, if the Developer fails to complete the Public Improvements within the time specified herein, or any extensions of time granted by the Village (which extension shall not be unreasonably withheld) or the Developer abandons the project (ceases all work for a period of six (6) consecutive months) without reasonable cause for delay, and, if as a result, a breach of this Agreement occurs (subject to the terms of Section 11.3 of this Agreement), the Village shall have the right but not the obligation to complete the Public Improvements using the remaining Bond Proceeds on deposit in the Improvement Fund to pay for the completion of the Public Improvements identified in the Project Budget attached as Exhibit B under the caption "Bond Proceeds". Additionally, to the extent that the remaining Bond Proceeds are not sufficient to pay for the reasonable costs of such completion of the Public Improvements by the Village, the Village shall have the right to draw upon the performance

bond identified in Section 3.8(ii) of this Agreement for such reasonable additional costs. Upon completion of the Public Improvements by the Village, the Village shall issue to the Developer a written Certificate of Completion of the Public Improvements.

(e) Upon completion and acceptance of all the Public Improvements required for a particular development phase, the Developer shall provide the Village with a one year maintenance guarantee ("Maintenance Guarantee"). Upon the expiration of said year, the maintenance, repair, restoration, and reconstruction of all Public Improvements are the sole cost and expense of the Village.

3.3 Submission and Approval of Plans and Engineering.

(a) Neu Haven Subdivision. All work with respect to the construction of the Public Improvements by the Developer for the Neu Haven Subdivision shall be performed in conformance with the approved Preliminary and Final Engineering Plans. The Developer shall prepare and submit to the Village for approval by the Village, (which approval shall not be unreasonably delayed or withheld), a Final Plat or Plats of Subdivision and Final Engineering for the Development (collectively "Construction Plans").

(b) The 55 Acres. All work with respect to the construction of the Public Improvements by the Developer for the 55 Acres shall be performed in conformance with Final Engineering Plans submitted to and approved by the Village (which approval shall not be unreasonably delayed or withheld). However, as agreed in the Annexation Agreement, the Developer may construct a sanitary sewer, water, and storm water improvements on and off the property prior to approval of a Final Plat of Subdivision at the developer's risk. The procedures identified in Section 9.A of the 55 Acres Annexation Agreement shall govern the submission to and approval of the Final Engineering Plans for the 55 Acres ("55 Acres Final Engineering Plans").

3.4 Public Improvements Constructed on Village's Right-of-Way and Public Lands. The Village hereby grants or shall cause to be granted to the Developer easements and/or licenses with respect to the Village's right-of-way and public lands and private property (which the Village has acquired easements over) for which some or all of the on site or off site Public Improvements are required and which are necessary to permit the Developer to construct the Public Improvements in a form and substance acceptable to the Developer and the Village. All such easements and licenses shall be duly executed and, if necessary, recorded, prior to the commencement of construction. Notwithstanding the foregoing, the Developer agrees that all Public Improvements shall be constructed within publicly dedicated rights-of-way, on public lands or in publicly dedicated easements, in private easements granted to the Village by owners of real estate. However, all such dedications or grants of licenses or easements not fulfilled its responsibility to obtain the required off-site easements and licenses, and the Developer requests Final Plat approval, the approval can be given if the Developer can provide the Village with assurances that all such licenses or easements will be acquired.

3.5. Conformance to Federal, State, and Local Requirement. Subject to the provisions of the Entitlement Documents, all work with respect to the Public Improvements in the Neu Haven Subdivision shall conform to all applicable ordinances, codes, rules and regulations in effect as of the date of this Agreement and all applicable federal, state and local laws, regulations, codes, rules and ordinances including, without limitation, the Village's Subdivision Control Ordinance as of January 10, 2000. In regards to the 55 Acres, the Public Improvements shall conform to all applicable ordinances, codes, rules and regulations in effect as of the date of the 55 Acre Annexation Agreement, unless the Commercial Property is further subdivided. If the Commercial Property is further subdivided, in that instance the regulations in effect on the date of the subdivision application shall control. The Village may not adopt any ordinances, rules or regulations which discriminate against the Developer or which will cause the cost of the Public Improvements to increase.

3.6 Insurance. Prior to commencement of construction of the Public Improvements, the Developer shall cause to be procured and delivered to the Village, at the Developer's sole cost and expense, and shall maintain in full force and effect until construction of the Public Improvements has been completed, Developer's Master Insurance Policy ("Insurance Policy") of commercial liability insurance and, during any period of construction, contractor's liability insurance and worker's compensation insurance, with liability coverage under the commercial liability insurance of not less than One Million Dollars per occurrence and Two Million Dollars in the aggregate (which may be in the form of umbrella coverage) and limits under the other policies of insurance in accordance with statute, all such policies to be in such form and issued by such companies as shall be reasonably acceptable to the Village, to protect the Village and the Developer against any liability incidental to the use of, or resulting from, any accident occurring on or about the Public Improvements or the construction of an improvement thereof. Each such policy shall name the Village as an additional named insured party. If desired by the Developer, the same Insurance Policy shall also satisfy the insurance requirements for the Clublands Project.

3.7 Rights of Inspection. During construction of the Public Improvements, the Village or its designee shall have the right at any time and from time to time to enter upon the Property for the purpose of conducting such inspections as the Village may deem appropriate. In the event that the Village or its designee discovers a defect or deficiency in the construction of the Public Improvements, the Village or its designee shall promptly notify the Developer thereof. Any such inspection by the Village of the Public Improvements shall not be construed as a representation by the Village that there has been compliance with the Construction Plans or that the Public Improvements will be or are free of faulty materials or workmanship, or as a waiver of any right that the Village or any other party may have against the Developer or any other party for failure to comply with the Construction Plans or the provisions of this Agreement.

3.8 Security for Public Improvements. The security requirements of this Agreement shall be deemed fully satisfied as follows: (i) no security is required for that portion of the cost of the Public Improvements that are paid, or to be paid, from the Bond Proceeds, and (ii) to the extent

the Bond Proceeds are insufficient to pay for the cost of the Public Improvements (the "Insufficient Amount"), then, the Developer will provide the Village with a performance bond for the Insufficient Amount in an amount not to exceed 110% of the Insufficient Amount. In the event that the Bond Proceeds are insufficient to complete the Public Improvements, the Village may draw upon the performance bond for payment of any Public Improvements according to the procedures set forth in its subdivision ordinance.

3.9 Acceptance of Public Improvements. The Village's acceptance of the Completed Improvements shall be in accordance with the following provisions.

(a) Upon completion of the Public Improvements or designated phases of the Public Improvements ("Completed Improvements"), the Developer shall submit a written request to the Village and the Village Engineer requesting an inspection of the Completed Improvements.

(b) The Village shall within five (5) business days conduct an inspection of the Completed Improvements. If upon inspection by the Village or its designee ("Inspector") the Completed Improvements are deemed sufficient by the Inspector, the Village shall within 2 business days of the inspection send a written Certificate of Completion and Acceptance ("Certificate") to the Developer indicating the Village's acceptance of the Completed Improvements.

(c) Should the Inspector determine that the Completed Improvements are inadequate, the Village shall within five (5) days send written notice to the Developer specifically and completely identifying all claimed inadequacies, for which the Developer will have five (5) days to remedy, subject to the Unavoidable Delay provisions identified in Article Nine.

(d) Should the Village upon written request by the Developer fail to inspect the Completed Improvements within the time period designated above or to send either a Certificate or a notice identifying all claimed inadequacies, subject to the Unavoidable Delay provisions identified in Article Nine, at that time the Completed Improvements shall be deemed accepted by the Village.

3.10 Density and Zoning.

(a) Deercrest. In no event shall any ordinance of the Village, Annexation Agreement, or development approval or Entitlement for the Property amend the Entitlement Documents nor shall the Developer be required to draw any subdivision plat in such a way as to result in less than 379 detached dwelling units and 116 townhouses being permitted to be constructed on the Deercrest Property unless mutually agreed in writing by the Village and the Developer. In the event that there is a reduction in density caused as a result of such an agreement between the Village and the Developer, the Developer is required to prepay Special Taxes in the amount attributable to the reduction in density.

(b) Commercial Property. In no event shall any ordinance of the Village, Annexation Agreement, or development approval or Entitlement for the Property amend the Entitlement Documents nor shall the Developer be required to draw any subdivision plat in such a way that the result is (1) more restrictive uses than those approved by the 55 Acres Annexation Agreement; (2) an allowable F.A.R. of less than .25 as defined in the 55 Acre Annexation Agreement; (3) an allowable building height of less than 35 feet; and (4) individual building lot coverage restrictions of less than 80,000 square feet per building.

3.11 Administration of SSA. The Village shall contract with an administrator or consultant to administer the Special Service Area Number One, including, without limitation, calculation, levy, abatement, administration and collection of the special tax for said Special Service Area Number One, on such terms as shall be reasonably agreed to between the parties. The costs related to the Administration of the Special Service Area Number One shall be payable from the special tax collections.

ARTICLE FOUR **Developer Indemnification of the Village**

The Developer agrees to indemnify, defend and hold the Village and its officers, employees, attorneys, engineers and consultants harmless from and against any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense (including, without limitation, reasonable attorneys' fees), to the extent resulting from, arising out of, or based upon: (i) any breach or default on the part of the Developer in the performance of any of its obligations under or in respect of this Agreement; (ii) any act of negligence of the Developer or any of its agents, contractors, servants or employees; or (iii) any violation by the Developer of any easements, law, ordinances or codes affecting the Area, the Village Property, the Development or the Public Improvements. In case any such claim shall be made or action brought based upon any such claim in respect of which indemnity may be sought against the Developer, upon receipt of notice in writing from the Village setting forth the particulars of such claim or action, the Developer shall assume the defense thereof including the employment of counsel reasonably acceptable to the Village and the payment of all costs and expenses. The Village shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of the Village.

ARTICLE FIVE **Payment for Public Improvements**

5.1 Improvements to be Constructed.

(a) Request for Payment. The Developer may submit to the Village Engineer, or his written designee and send a copy to the Consultant (as defined in the Trust Indenture) not more frequently than once each calendar month, a written request as provided in Exhibit C ("Request

for Payment") for payment of the Developer's costs of constructing those portions of the Public Improvements which have been completed to date and are identified on the Construction Plans and as enumerated in paragraph B of the Recitals. The Village Engineer shall inspect each portion of the Public Improvements for which payment is requested and shall, within five (5) business days after submission of a Request for Payment, make its inspection and, if the Village Engineer confirms that the work for which payment is requested has been done, the Village Administrator shall execute and deliver to the Developer and to the Trustee a written statement in accordance with the Trust Indenture ("Disbursement Request") in which the Village Engineer states it has inspected the work described therein and has approved payment therefor in the amount provided for in the Disbursement Request. A form Disbursement Request is attached hereto as Exhibit D.

(b) Denial of Compliance. If, in the Village Engineer's reasonable opinion, any portion of the work is not in compliance with the Construction Plans, the Village Engineer shall within five (5) business days after submission of a Request for Payment notify the Developer in writing of (1) the specific improvements which it believes are not in compliance with the Construction Plans, (2) the reasons why it believes that the work is not in compliance with the Construction Plans and (3) the reasons why it is not approving a portion or all of the requested disbursement together with reasonably detailed explanations thereof. However, to the extent that the Request for Payment relates to multiple Public Improvements and the Village Engineer confirms that some of the Public Improvements addressed by the Request for Payment are complete, the Village Engineer shall execute and deliver to the Developer and to the Consultant a Disbursement Request stating that it has inspected the work therein described and has approved payment therefor in the amount provided for in the Disbursement Request.

(c) Release of Funds. At such time as work covered by a Request for Payment is approved by the Village Engineer and subject to the provisions of the Trust Indenture, the Village Administrator shall deliver a Disbursement Request to the Trustee directing the Trustee to disburse to the Developer the amount of funds provided for in the Disbursement Request to the extent that funds are available in the Improvement Fund.

5.2 Conditions Precedent to Payment. The Village Administrator shall authorize the distribution of funds by the Trustee to the Developer to pay for those portions of the Public Improvements which have been completed upon satisfaction of the following conditions:

(a) The Developer has submitted to the Village Engineer, with a copy to the Consultant and to the Village Engineer, a Request for Payment with respect to such portions of the public improvements and the Village Administrator has issued, or is required to issue, a Disbursement Request to the Trustee with respect thereto;

(b) The Developer has caused a title insurance company licensed to do business in Illinois ("Title Company") to issue to the Trustee and the Village a letter or commitment whereby the Title Company insures the Trustee and the Village from any and all mechanic's lien

claims with respect to work covered by the Disbursement Request. Alternatively, the Developer may request that the Village Engineer direct the Trustee to disburse the funds into a construction escrow account with the Title Company with directions that the Title Company shall not release any funds to any subcontractor or materialmen unless and until appropriate lien waivers and supporting affidavits to the satisfaction of the Title Company have been received by the Title Company; and

(c) Subject to the Unavoidable Delay provisions of Article Eight and the Notice and cure provisions of Section 11.3 of this Agreement, the Developer is not in default under this Agreement.

5.3 Bond Proceeds.

(a) The Bond Proceeds shall be deposited, held, invested, reinvested and disbursed as provided in the Trust Indenture. Sufficient Bond Proceeds shall be deposited in the Improvement Fund, which, together with anticipated interest earnings, will fully fund the budgeted amounts set forth in Exhibit B for the Public Improvements under the caption "Bond Proceeds". Monies in the Improvement Fund shall be withdrawn therefrom in accordance with the provisions of the Trust Indenture and the applicable provisions of this Agreement for payment of all or a portion of the cost of constructing the Public Improvements under the heading Bond Proceeds. The Developer understands and agrees that the Village alone shall deliver to the Trustee a direction as to the investment of funds on deposit in the funds and accounts established by or pursuant to the Trust Indenture, including the Improvement Fund; provided, however, the Village shall consult with the Developer so long as the Developer or its affiliate is the legal or beneficial owner of at least 446 (90%) of the lots improved, or to be improved, with the Dwelling Units as to the investment of such funds so long as there are funds available in the Improvement Fund.

(b) Except in the event of fraud or gross negligence, the Village shall have no responsibility whatsoever to the Developer with respect to any investment of funds made by the Trustee under the Trust Indenture, including any loss of all or a portion of the principal invested or any penalty for liquidation of investment. Any such loss may diminish the amounts available in the Improvement Fund to pay the cost of constructing the Public Improvements. The Developer further acknowledges that the obligation of any owner of real property in the Development, including the Developer to the extent it owns any property in the Development, to pay special service area taxes is not in any way dependent on the availability of amounts in the Improvement Fund to pay for all or any portion of Public Improvements. The Developer acknowledges that any lack of availability of amounts in the Improvement Fund to pay the cost of constructing the Public Improvements shall in no way diminish any obligation of the Developer with respect to the construction of the Public Improvements in accordance with this Agreement or any other agreement relating to the Deercrest project and to which the Developer is a party.

(c) The Village agrees not to initiate or approve any amendment to the Trust Indenture that affects the Improvement Fund without the express written consent of the Developer.

5.4 Limited Liability of Village. The Developer agrees that any and all obligations of the Village arising out of or related to this Agreement are special and limited obligations of the Village and the Village's obligations to make any payments under this Agreement are restricted entirely to the monies, if any, in and available for disbursement from the Improvement Fund and from no other source. Except in the event of fraud or gross negligence, no member of the Corporate Authorities, or any Village staff member, employee or agent, or consultant, including attorneys and engineers, shall incur any liability under this Agreement to the Developer or any other party in their individual capacities by reason of their actions under this Agreement or the execution of this Agreement.

5.5 Acknowledgement. The Village agrees, upon written request by the Developer, within five (5) business days, to send a letter acknowledging that construction of the Public Improvements is underway and that the Developer is expending funds in the pursuit of constructing the Public Improvements.

ARTICLE SIX

Other Agreements

6.1 **Continuing Disclosure.** The Developer agrees to provide to the Village (except as otherwise provided), the underwriter of the Bonds, and the Notice Beneficial Holders and the Consultant (as defined in the Trust Indenture) certain continuing information concerning the development of the Property until such time as 446 (90 percent) of the Dwelling Units are subject to contracts for sale. This information includes the following: quarterly reports to the Village, the underwriter of the Bonds, the Notice Beneficial Holders, and the Consultant setting forth (A) the number of single-family detached homes and townhomes and/or bulk property sales, (B) the number of single-family detached homes and townhomes constructed on the Property, (C) a description of the type of such homes, (D) a description of the number of sales of homes closed and the range of sale prices for such homes, (E) any pending litigation which would adversely affect the ability of the Developer to develop the Property or to pay the Special Tax for Special Service Area Number One, (F) any material change in the structure or ownership of the Developer, (G) any failure of the Developer or affiliate of the Developer to pay by the date due general ad valorem property taxes, the Special Tax for Special Service Area Number One, or any other governmental charge on the Property, (H) any denial or termination of credit, (I) any denial or termination of, or default under, any letter of credit, line of credit or loan or any other loss of a source of funds that the Developer has reason to believe is likely to have a material adverse effect on the ability of the Developer to develop the Property, (J) the occurrence of any event of bankruptcy with respect to the Developer or any affiliate of the Developer, (K) any significant amendments to land use entitlements for the Property if such amendments are likely to prevent or delay the development of the Property, (L) any previously undisclosed governmentally-imposed preconditions to commencement or continuation of development of the Property if such preconditions are likely to prevent or delay the development of the Property, (M) any previously undisclosed legislative, administrative or judicial challenges to development of the Property or the collection of the Special Tax for Special Service Area Number One, and (N) any changes of which the Developer is aware, if material, in the alignment, design or likelihood of completion of significant public improvements affecting the Property, including major thoroughfares, sewers, water conveyance systems and similar facilities. Quarterly reports shall be made available within 30 days after the end of each calendar quarter. In addition, the Developer shall use its best efforts to provide prompt notice of any of the events listed in (E) through (N). Until such time as 446 (90%) of the Dwelling Units are subject to contracts for sale as verified in writing by the Developer to the Village and the Underwriter, upon prior written notice to Developer by the Notice Beneficial Holders, Developer shall make its current annual financial statements available for review by the Notice Beneficial Holders at Developer's offices. However, Notice Beneficial Holders of more than One Million Dollars (\$1,000,000.00) of Bonds, upon signing a confidentiality agreement shall be provided with a copy of the current annual financial statements at said Notice Beneficial Holders request.

6.2 **Amendment to Entitlement Documents.** To the extent any amendments to the Entitlement Documents are necessary, the Village and the Developer agree to work together and use their best efforts to amend those certain Entitlement Documents, to incorporate the relevant provisions of this Agreement as they apply to the Property; provided, however, that no such amendments nor any future amendments shall materially affect the rights of the Special Service Area Number

One bondholders. No such amendment shall result in an increase in the special taxes owed by property owners pursuant to the Rate and Method.

6.3 Sale of the Property. The Village agrees that the Developer shall have the right to either build on the Property or sell developed lots to other builders or to convey any or all of the property at any time after the date of this Agreement. The Developer shall notify the Purchaser (as defined the Trust Indenture), the Village and the Consultant prior to the sale of any portion of the property other than the sale of an individual Dwelling Unit.

ARTICLE SEVEN

Authority

7.1 Powers. Each Party hereby represents and warrants to the other Party that the Party making such representation and warranty has full constitutional and lawful right, power and authority, under currently applicable law, to execute, deliver and perform the terms and obligations of this Agreement, and all of the foregoing have been or will be duly and validly authorized and approved by all necessary Village proceedings, findings and actions and all necessary Developer actions. Accordingly, this Agreement constitutes the legal, valid and binding obligation of the Village and the Developer, enforceable in accordance with its terms and provisions and does not require the consent of any other governmental authority.

7.2 Authorized Parties. Whenever under the provisions of this Agreement and other related documents and instruments or any supplemental agreements, any request, demand, approval, notice or consent of the Village or the Developer is required, or the Village or the Developer is required to agree or to take some action at the request of the other party, such request, demand, approval, notice or consent, or agreement shall be given for the Village, unless otherwise provided herein, by the Village Treasurer or his or her written designee and for the Developer by its President, or his written designee; and either party shall be authorized to act on any, such request, demand, approval, notice or consent, or agreement or other action and neither party hereto shall have any complaint against the other party as a result of any such action taken.

ARTICLE EIGHT

Unavoidable Delays

The time for performance by Developer shall be extended by a period of time equal to the time of delay caused by any of the following reasons (herein called "Unavoidable Delays"): Acts of God, acts of the Public Enemy, or acts of fire, strikes, flood, governmental orders or edicts, governmental rationing or allocation of materials, adverse weather conditions, lockouts, riots, strikes, or any other cause beyond the reasonable control of Developer.

ARTICLE NINE
Transfer Declaration

Each Illinois Real Estate Transfer Declaration Form ("Declaration Form") shall reflect the Special Service Area Number One financial benefit to that lot so that the full actual consideration for the lot is reflected on the Declaration Form.

ARTICLE TEN
Transfer Credits

The Village agrees to assist the Developer in relation to the Transfer Parcels as required in Article 13 of the Clublands Development Agreement, attached as an exhibit to the Settlement Agreement. The Village acknowledges that no sewer impact connection tap-on fees shall be charged to Developer in connection with the Development inasmuch as all such connection impact fees have been paid to or are due to Lake County, Illinois.

ARTICLE ELEVEN
General Provisions

11.1 Rider to Sales Contracts. The Developer agrees to attach the Rider or one substantially similar to it, attached hereto as Exhibit E to all sales contracts for the sale of single-family detached homes.

11.2 Time of Essence. Time is of the essence of this Agreement.

11.3 Breach. A party shall be in "breach of this Agreement" if it shall fail to perform any of its respective obligations under this Agreement and, barring an Unavoidable Delay, after written notice from the other Party of such failure to perform, does not commence performance within thirty (30) days after such notice and diligently prosecute the same to completion. Each of the Parties shall have all remedies available at law or in equity to enforce this Agreement or recover damages in case of a breach of this Agreement beyond any applicable cure periods.

11.4 Amendment. This Agreement, and any exhibits attached hereto, may be amended only by: (i) the agreement of all of the Parties evidenced by a written amendment, with the adoption of an ordinance or resolution of the Village approving the written amendment; (ii) as provided by law; or (iii) by the execution of the written amendment by the Parties or their successors in interest.

11.5 Conflict with Prior Agreements. In the event that there is a conflict between this Agreement and the Entitlement Documents, the Entitlement Documents shall control.

11.6 Severability. If any provisions, covenants, agreements or portions of this Agreement, or its application to any person, entity or property, is held invalid, such invalidity shall not affect the application or validity of any other provisions, covenants, agreements or portions of this

Agreement and, to that end, all provisions, covenants, agreements or portions of this Agreement are declared to be severable.

11.7 Illinois Law. This Agreement shall be construed in accordance with the laws of the State of Illinois.

11.8 Notice. Any notice to be given or served hereunder or under any document or instrument executed pursuant hereto shall be in writing and shall be: (i) delivered personally, with a receipt requested therefor; or (ii) sent by facsimile; or (iii) sent by a recognized overnight courier service; or (iv) delivered by United States registered or certified mail, return receipt requested, postage prepaid. All notices shall be addressed to the Parties at their respective addresses set forth below, and the same shall be effective: (a) upon receipt or refusal if delivered personally or by facsimile; (b) one (1) business day after depositing with such an overnight courier service; or (c) two (2) business days after deposit in the mails, if mailed. A Party may change its address for receipt of notices by service of a notice of such change in accordance herewith.

If to the Village: Village of Antioch
874 Main Street
Antioch, IL
60002-1509
Attn: Michael Haley

With a Copy to: Village of Antioch
874 Main Street
Antioch, IL
60002-1509
Attn: Candi Rowe

If to Developer: Neumann Homes, Inc.
4355 Weaver Parkway
Warrenville, Illinois 60555
Attn: Kenneth P. Neumann
Chief Executive Officer

With a Copy to: Neumann Homes, Inc.
4355 Weaver Parkway
Warrenville, Illinois 60555
Attention: William M. Laytin
General Counsel

11.9 Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.

11.10 Consent or Approval. Except as otherwise provided in this Agreement, whenever consent or approval of a Party is required, such consent or approval shall not be unreasonably withheld.

11.11 Assignment. At its sole cost and expense, the Developer may collaterally assign its interest in the payments to be received hereunder to a third-party lender who is advancing funds for the payment of the costs of the Public Improvements. The Developer shall notify the Village of its intent to collaterally assign its interest in the payment received and said assignment is subject to the reasonable approval of the Village. No assignment shall result in any increased costs to the Village, unless the Village is reimbursed for such increased costs.

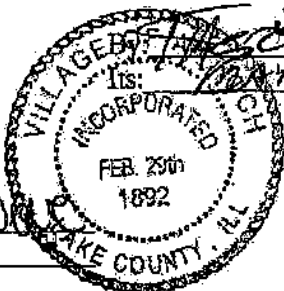
11.12 Effective Date. This Agreement shall become effective upon the date first above written by each of the parties.

VILLAGE OF Antioch, an Illinois
municipal corporation

ATTEST:

By: _____

Its: _____



DEVELOPER:

NEUMANN HOMES, INC.

By: _____

Its: _____

ATTEST:

By: _____

Its: _____

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VILLAGE OF Antioch, an Illinois
municipal corporation


By: _____
Its: _____

ATTEST:

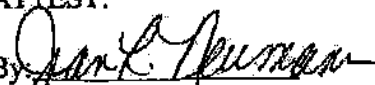
By: _____
Its: _____

DEVELOPER:

NEUMANN HOMES, INC.
an Illinois Corporation

By:  _____
Its: Chief Executive Officer

ATTEST:

By:  _____
Its: Secretary

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